

Attorney Docket No. P13255
Customer Number 27045

REMARKS/ARGUMENTS

1.) Claim Amendments

The Applicant has amended claims 1, 10, 22, 30, 40, and 41. Claims 5, 17, 27, and 35 have been canceled. Accordingly, claims 1-4, 6-16, 18-26, 28-34, and 36-41 are pending in the application. Favorable reconsideration of the application is respectfully requested in view of the foregoing amendments and the following remarks.

2.) Claim Rejections – 35 U.S.C. § 103 (a)

The Examiner rejected claims 1-15, 17-25, 27-33 and 35-41 under 35 U.S.C. § 103(a) as being unpatentable over Spear (US 5,517,492) in view of Kay, et al. (US 5,299,198). The Applicant respectfully traverses this rejection because (1) not all of the elements are taught by the combination of Spear and Kay, and (2) the combination itself is improper.

The Examiner states that Spear discloses a method for continuous allocation of real-time traffic in a communication network, comprising the steps of: allocating a first unit of real-time data for transmission during a first interval with a first transmission rate (figure 2A, element A1 is a first unit of real-time speech data belonging to a user A and the entire 8 slots of user A are the first interval, further the first interval is a full rate as described in col. 2, lines 64-66). The Applicant notes that the Examiner defines the first interval as "the entire 8 slots of user A."

The Examiner also states "allocating a second unit of real-time data for transmission during an . . . interval with a second transmission rate (figure 2C, element A3 of the downlink is a real time speech data unit allocated in an interval and has a second transmission rate as described in col. 3, lines 10-16)." The Applicant respectfully disagrees with the Examiner's characterization of this element as applied to Spear. According to the Examiner's own definition of a time interval, A3 occurs within the first time interval (before frame 8). A3 does not occur within the "third interval" as required by claim 1. In fact, figure 2C does not show any data units during the third interval (as that term is defined by the Examiner).

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The Examiner then states that allocating a third unit of real-time data for transmission during said third interval with said second transmission rate (figure 2C, element B1 is a third unit of real-time speech data allocated in the same interval as A3 with the same second transmission rate). Again, the Applicant respectfully disagrees with the Examiners characterization of this element as applied to Spear. According to the Examiner's own definition of a time interval, B3 occurs within the first time interval (before frame 8). B3 and A3 simply do not occur within the "third interval" as required by claim 1.

The Applicant does not contest the Examiner's right to define an interval broadly to reject a claim. However, the Applicant respectfully requests that the Examiner use his own definition consistently. The Examiner appears to have ignored the fact that claim 1 claims THREE sequential intervals. The relevance of using a sequence (as implied by the use of a first, a second, and a third) seems to have been lost on the Examiner. In any event, to avoid any confusion, the Applicant has amended the independent claims by adding the limitation of "wherein each of said intervals are sequential and comprises a block in a timeslot." Thus, it is clear that the Examiner's definition of an interval as 8 frames can no longer be applied. It should also be clear that when using this definition for an interval, neither Spear nor Kay teach the use of three sequential intervals a second and third unit if real-time data are combined into the third interval. Thus, combination of Spear and Kay does not teach all of the elements of modified claim 1.

Assuming *arguendo*, that the elements of claim 1 might be found in the combination of Spear and Kay, the Applicant respectfully submits that the combination of references is improper. It is clear that the Examiner has not even used complete claim elements to arrive at the combination. For instance, the Examiner states "allocating . . . data for transmission during a second interval (figure 2A, the downlink shows more data units allocated in a second interval)." The Examiner glossed over the claim element of "allocating *non-real time* data" and uses Kay to supply this feature of this element. However, Spear is concerned with only speech data (Spear, col. 1, lines 7-10). The Applicant could find nothing in Spear that even remotely suggests using non-speech data.

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Thus, it is respectfully submitted that Examiner has used portions of the elements and even mere unrelated phrases to reconstruct claim 1. The case law forbids this type of combination by requiring that there must be evidence that a skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. It is also clear that a rejection cannot be predicated on the mere identification of individual components of claimed limitations. Rather, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed. *Ecologchem Inc. v. Southern California Edison*, 56 USPQ2d 1065, 1076 (Fed. Cir. 2000).

The case law makes it clear that the best defense against hindsight-based obviousness analysis is the rigorous application of the requirement for a showing of a teaching or motivation to combine the prior art references. See *Dembiczak*, 50 USPQ2d, 1614, 1617 (Fed. Cir. 1999). "Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight." *Id.* It is respectfully submitted that the only way the cited references could be pieced together to defeat patentability is indeed to use Applicant's disclosure as a blueprint, as is clearly illustrated by the use of multiple references to render a single element of claim 1 obvious.

Accordingly, the combination of references is improper. There is simply no teaching or suggestion in any of the references for the combinations used by the Examiner. Thus, the Applicant respectfully requests that the §103 rejection be withdrawn.

The Applicant has amended the independent claims 1, 10, 22, 30, 40, and 41 to better define the intended scope of the claimed invention and include the element of wherein each of said intervals is sequential comprises a block in a timeslot. Consequently, these claims are patentable for reasons similar to those reasons stated for claim 1. The Examiner's consideration of the amended Independent claims is respectfully requested.

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Claims 2-4, 6-9, 11-15, 18-21, 23-25, 28-29, 31-33 and 36-39 depend from the amended independent claims and recite further limitations in combination with the novel elements of the independent claims. Therefore, the allowance of the dependent claims 2-4, 6-9, 11-15, 18-21, 23-25, 28-29, 31-33 and 36-39 is respectfully requested.

Regarding claims 5, 17, 27, and 35, these claims have been canceled. However, the elements of these claims have been incorporated into claims 1, 10, 22, 30, 40, and 41. Thus, to the extent that this rejection applies to the independent claims, the Applicant respectfully traverses this rejection.

With regard to claims 5, 17, 27, and 35, the Office Action states that "It would have been obvious to one with ordinary skill in the art at the time of invention to include the timeslots with the intervals for the same reasons and motivation as in claims 1, 10, 22, and 30." The Applicant respectfully disagrees with this position.

In claims 1, 10, 22, and 30, the Examiner used his own definition of interval to be "the entire 8 slots of user A are the first interval." As explained above, using this definition, the method as claimed in claim 1 cannot be performed by Spear. Consequently, not all of the steps of claim 1 are taught by Spear, nor by Kay. Thus, the Examiner cannot use the "same reasons and motivation as in claims 1, 10, 22, and 30" to justify his rejection.

The Examiner also rejected claims 16, 26 and 34 under 35 U.S.C. § 103(a) as being unpatentable over Spear and Kay and further in view of Rasanen (US 6,647,006). However, Rasanen does not add the necessary elements to the combination to sustain the rejections in light of the remarks above and the amended claims. Consequently, the Applicant respectfully requests that this rejection also be withdrawn.

CONCLUSION


In view of the foregoing remarks, the Applicant believes all of the claims currently pending in the Application to be in a condition for allowance. The Applicant, therefore, respectfully requests that the Examiner withdraw all rejections and issue a Notice of Allowance for all pending claims.

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The Applicant requests a telephonic interview if the Examiner has any questions or requires any additional information that would further or expedite the prosecution of the Application.

Respectfully submitted,



Bill R. Naifeh
Registration No. 44,962

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Ericsson Inc.
6300 Legacy Drive, M/S EVR 1-C-11
Plano, Texas 75024

(972) 583-2012
bill.xb.naifeh@ericsson.com